

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the General Government Appropriations Committee

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BILL: SB 602

INTRODUCER: General Government Appropriations Committee and Senator Justice

SUBJECT: Contamination Notification

DATE: April 6, 2010

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------|----------------|-----------|------------------|
| 1. | Wiggins  | Kiger          | EP        | <b>Favorable</b> |
| 2. | Wolfgang | Yeatman        | CA        | <b>Favorable</b> |
| 3. | Pigott   | DeLoach        | GA        | <b>Fav/CS</b>    |
| 4. |          |                |           |                  |
| 5. |          |                |           |                  |
| 6. |          |                |           |                  |

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**I. Summary:**

This bill provides for contamination notification when site rehabilitation is being done pursuant to an administrative or court order. The bill expands the Department of Environmental Protection's (department) duty to notify certain parties of the contaminations. The bill expands the current requirement to notify the school's superintendent and, in turn, expands the school's requirements to notify teachers and parents or guardians of students attending schools or child care facilities located within a specified radius of certain categories of contaminated sites.

The bill substantially amends section 376.30702, Florida Statutes.

**II. Present Situation:**

Sections 376.30701, 376.3071, 376.3078, and 376.81, F.S., authorize the department and persons responsible for contaminated site rehabilitation to use risk-based corrective action (RBCA) when cleaning up such sites. Each of these statutes also requires notification of affected parties when the department approves a clean-up plan that allows contamination to remain beyond the boundaries of the source property while clean-up is underway. These provisions are designed to facilitate early notification of the discovery of contamination. Parties that fail to comply with the requirements are subject to penalties outlined in ss. 376.302 and 403.161(1)(b), F.S., which may include fines and civil litigation if good faith efforts have not been followed.

In 2005, the Legislature determined that it was necessary to provide notification to parties potentially affected by contamination upon discovery of its presence beyond property boundaries, rather than waiting until a clean-up plan was approved. The 2005 Legislature established s. 376.30702, F.S., which requires that, if contamination is discovered beyond the site boundaries

during any site rehabilitation work conducted pursuant to any of the RBCA statutes, then the owners of the property where the contamination is discovered must be notified. However, this notification is only required to be provided for specific properties from which samples are actually collected and analyzed in a laboratory. Consequently, if parcels in the vicinity of a contaminated site are not sampled, some people who may be affected by contamination may not be notified of its presence.

Section 376.30702, F.S., also requires that, if the property at which contamination has been discovered is a school as defined in section 1003.01, F.S., the department must direct the local school board to notify the teachers and parents or guardians of students attending the school of the contamination. The notification is required to include the following information.

- A listing of all record owners of any real property.
- Separate tables that list the sampling location.
- Sampling date and name of contaminants detected above clean-up target levels.
- The contaminant concentrations and whether clean-up is based on health, nuisance, organoleptic, or aesthetic concerns.
- A vicinity map.
- Other specific information requirements outlined in statute.

The department has rules and provisions in place to address businesses and property owners that regularly deal with potentially harmful pollutants. For example, there are a large number of sites eligible for petroleum and dry-cleaning solvent clean-up programs. These businesses are taxed to fund this program and are required to conduct clean-up on these sites when contamination occurs. The department closely monitors this program, including an approved standard operation of procedures manual and approved list of clean-up contractors, to ensure protection of the environment and public health.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 376.30702, F.S., to apply contamination notification requirements to site rehabilitation activities conducted pursuant to an administrative or court order. The bill changes the term “medium” and “medium, such as groundwater, soil, surface water, or sediment” to groundwater, surface water, or soil. “Medium” could be any substance. Therefore, the type of contamination that needs to be identified outside the boundary of the property may be narrowed.

The bill requires separate tables for groundwater, soil, and surface water be identified on the vicinity map. The bill also provides an option to provide a contaminant plume map in addition to a vicinity map and data tables in the notification package submitted to the department.

The bill amends s. 376.30702(3), F.S., relating to notification requirements, to include:

- The senior elected local official representing the affected area.
- The senior administrative local official representing the affected area.
- The school district superintendent representing the affected area.
- The elected state and federal officials representing the affected area.
- All real property owners, presidents of any condominium associations or sole owners of condominiums, and lessees and tenants of record of:

- The property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation.
- The properties within a 500-foot radius of each sampling point at which specified contamination is discovered.
- The properties within a 250-foot radius of each sampling point at which specified contamination is discovered.

The bill provides direction on how notice to local governments and to property owners, lessees, and tenants must be provided. The department must verify, within 30 days after receiving notice of the discovery of contamination, that the person responsible for site rehabilitation has complied with notice requirements. The department is authorized to pursue enforcement under ch. 376 and ch. 403, F.S., if notice has not been provided appropriately. The bill deletes an outdated provision from the statute as originally adopted that required the department to use the information it possessed at the time (September 1, 2005) to provide notices to all record owners of property at which contamination had been discovered beyond property boundaries.

If the property at which contamination has been discovered is the site of a public school, the department must mail a copy of the notice to the superintendent of the appropriate school district and direct the superintendent to provide actual notice annually to teachers and parents or guardians of students attending the school. Similar notification and direction must be provided for private K-12 schools and child care facilities. If any property within a 500-foot radius of a property at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701, F.S., or an administrative or court order, is the site of a public school, the department must mail a copy of the notice to the superintendent and direct the superintendent to provide actual notice annually to the principal of the school. Notification and direction must be provided if any property that is the site of a public school is within a 250-foot radius of a property at which contamination has been discovered during site rehabilitation pursuant to ss. 376.3071(5), 376.3078(4), or 376.81, F.S., or during site rehabilitation at a permitted solid waste management facility subject to a groundwater monitoring plan.

If contact information is available, the bill requires local governments to send a copy of the notice to the president or comparable elected officer of each homeowners' or neighborhood association in the potentially affected area.

The department and local government is directed to recover from the responsible party, costs for postage, materials, and labor associated with notification, unless site rehabilitation is eligible for state-funded clean-up pursuant to ss. 376.3071(5) or 376.3078(4), F.S.

**Section 2** finds that this act fulfills an important state interest.

**Section 3** of the bill provides an effective date of July 1, 2010.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

To the extent this bill requires cities and counties to expend funds to notify homeowners' associations or neighborhood associations of potentially affected areas, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest (see section 2 of the bill) and one of the following relevant exceptions must apply:

- i. Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated to the cities and counties;
- ii. Counties and cities are authorized to enact a funding source not available for such local governments on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- iii. The law applies to all persons similarly situated, including state government; or
- iv. The law is approved by two-thirds of the membership of each house of the legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Owners of contaminated property may be more vulnerable to lawsuits as a result of increased public awareness of the presence of contamination. In addition, the responsible party is required to reimburse the department the costs for postage, materials, and labor associated with notification, unless site rehabilitation is eligible for state-funded clean-up pursuant to ss. 376.3071(5) or 376.3078(4), F.S.

Property owners will benefit from more information about the extent of contamination in their vicinity. However, if contamination does exist or is presumed to exist, this may adversely affect the property values. Private K-12 schools and child care facilities will incur increased costs to annually notify teachers and parents or guardians attending the school.

**C. Government Sector Impact:**

The Department of Environmental Protection will incur an indeterminate increase in costs to identify and provide notification of contamination to a large number of property owners, lessees, and tenants that fall under the state-funded clean-up programs. These costs will continue for an indeterminate time due to the large number of sites eligible for the petroleum and dry-cleaning solvent clean-up programs. There will also be expenditures to pay contractors tasked with identifying parcel owners, lessees, and tenants and generating and mailing notice letters.

As most local governments own contaminated property, they may experience indeterminate costs associated with responding to resident inquiries about notices they receive from the department. In addition, the bill requires local governments to notice homeowner's associations for potentially affected areas. This cost is also indeterminate at this time.

School districts will also experience an indeterminate increase in costs for creating and mailing letters to teachers, parents, and guardians of schools within a 250-foot radius of a contaminated site.

The Department of Health (DOH) may experience an increase in workload related to resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies. The DOH estimates the fiscal impact to be seven positions and \$404,683 for Fiscal Year 2010-2011, annualized to \$474,284 in Fiscal Year 2011-2012. According to the department, there are 30,000 known contaminated properties in Florida. On average, within 500 feet of the properties are five other properties. Therefore, the bill could require notification of 150,000 property owners statewide. If only ten percent of property owners receiving notice inquire about the health threat, the DOH could be responding to 15,000 inquiries per year. It is estimated that each position could respond to approximately 2,000 inquiries per year.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by General Government Appropriations on April 6, 2010:**

- Amends the bill to limit undue costs of notification for local governments.

- Allows local governments to recover notification costs unless the site is eligible for state-funded cleanup.
- Provides a statement that this act fulfills an important state interest.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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